

1 MARK A. ELLINGSEN, MSB #4880
2 WITHERSPOON KELLEY
3 Spokesman Review Building
4 608 Northwest Boulevard, Suite 300
5 Coeur d' Alene, ID 83814-2146
6 Telephone: (208) 667-4000
7 Facsimile: (208) 667-8470
8 Email: mae@witherspoonkelley.com

9 ANDREW S. ELLIOTT (CA State Bar No. 254757), admitted pro hac vice
10 ase@severson.com
11 SEVERSON & WERSON
12 A Professional Corporation
13 One Embarcadero Center, Suite 2600
14 San Francisco, California 94111
15 Telephone: (415) 398-3344
16 Facsimile: (415) 956-0439

17 Attorneys for
18 Nissan Motor Acceptance Corporation

19 UNITED STATES DISTRICT COURT
20 DISTRICT OF MONTANA

21 NISSAN MOTOR ACCEPTANCE
22 CORPORATION, a California
23 corporation,

24 Plaintiff,

25 vs.

26 ROBERT ALLEN NISSAN OF
27 HELENA, INC., an Idaho corporation;
28 ROBERT T. ALLEN, an individual,

Defendants.

Case No. 6:19-cv-00016-CCL

STATEMENT OF STIPULATED
FACTS

Pursuant to L.R. 16(2)(b)(3), as well as this Court's Order, the parties respectfully submit this joint Statement of Stipulated Facts.

1. Defendant Robert Allen Nissan of Helena, Inc. ("Defendant" or "Robert Allen Nissan") owns and operated a retail automobile dealership located at 3135 Prospect Avenue, Helena, MT 59601.

2. Robert Allen Nissan's shareholder is defendant Robert T. Allen

1 (“Allen”).

2 3. On or about April 6, 2009, Defendant entered into an Automotive
3 Wholesale Financing and Security Agreement (“Wholesale Agreement”), by which
4 NMAC agreed to finance Defendant’s acquisition of new and used automobiles,
5 trucks and other vehicles.

6 4. On or about September 29, 2009, NMAC and Defendant entered into a
7 Nissan Retail Environmental Design Initiative Sign Program – Lease and
8 Maintenance Agreement (“Sign Lease Agreement”).

9 5. On or about March 7, 2014, Defendant entered into a Lease Plan
10 Financing and Security Agreement (“Lease Agreement”).

11 6. On or about April 6, 2009, and in order to induce NMAC to enter into
12 the Wholesale Agreement with Defendant, Allen executed and delivered to NMAC
13 a Continuing Guaranty Agreement (the “Guaranty”).

14 7. Defendant defaulted under the Wholesale Agreement. As a result of
15 Defendant’s defaults, NMAC has accelerated all loan balances and has declared all
16 amounts immediately due and owing.

17 8. Defendant defaulted under the Sign Lease Agreement. Defendant is
18 also in default under the Sign Lease Agreement due to its default under the
19 Wholesale Agreement.

20 9. Defendant is default under the Lease Agreement due to its default
21 under the Wholesale Agreement.

22 10. Defendant defaulted on its obligations to NMAC under the terms of the
23 Wholesale Agreement, Sign Lease Agreement and Lease Agreement (collectively
24 referred to as the “Loan Documents”), and Defendant’s indebtedness to NMAC
25 under the terms of the Loan Documents is now due and payable in full. Pursuant to
26 the terms and conditions of the Guaranty, Defendant’s indebtedness to NMAC under
27 the Loan Documents is an obligation of the Allen.

28 11. NMAC is entitled to its reasonable attorney’s fees and costs incurred by

1 enforcing its rights under the Wholesale Agreement, Sign Lease Agreement and
2 Lease Agreement.

3 12. On July 2, 2019, the parties submitted a stipulation regarding
4 Defendant's consent for the court to enter an order for seizure and delivery of
5 personal property collateral (the "Stipulation"). See Dkt. No. 46. Thereafter, and
6 pursuant to the Stipulation, NMAC repossessed the vehicle collateral.

7 13. NMAC is in the process of disposing of the vehicle collateral. Once
8 complete, NMAC will apply the sale proceeds minus expenses and costs to the
9 outstanding balance owed by Defendant to NMAC.

10 14. Defendant and Allen do not dispute liability; however, they dispute the
11 calculation of damages and whether NMAC disposed of the vehicles in a
12 commercially reasonable manner.

13
14 DATED: October 10, 2019

SEVERSON & WERSON
A Professional Corporation

15
16
17 By: /s/ Andrew S. Elliott
18 Andrew S. Elliott

19 Attorneys for Nissan Motor Acceptance
20 Corporation

21
22 DATED: October 10, 2019

JACKSON, MURDO & GRANT

23
24
25 By: /s/ Murry Warhank
26 Murry Warhank

27 Attorneys for Robert Allen Nissan of Helena,
28 Inc. and Robert T. Allen